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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,514	03/12/2004	Francois Spertini	30985/41486	8487
7590 10/09/2007				
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		EXAMINER		
		ROONEY, NORA MAUREEN		
		ART UNIT		PAPER NUMBER
		1644		
		MAIL DATE		DELIVERY MODE
		10/09/2007		PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/799,514

Applicant(s)

SPERTINI ET AL.

Examiner

Nora M. Rooney

Art Unit

1644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 55-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 55-65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. Applicant's amendment filed on 07/16/2007 is acknowledged.
2. Claims 55-65 are pending.
3. Claims 55-65 are currently under examination as they read upon a method for generating an improved composition of contiguous overlapping peptide fragments for a selected polypeptide allergen.
4. In view of the amendments filed on 07/16/2007, only the following rejections are maintained.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 55-61 stand rejected under 35 U.S.C. 102(b) as being anticipated by Kammerer et al. (Reference C9, IDS filed on 06/22/2004).

Applicant's arguments filed on 07/16/2007 have been fully considered, but are not found persuasive.

Applicant argues that Kammerer fails to teach: a method of selecting COPs based upon the combination of performing T cell stimulation and IgE binding tests to obtain such COPs; the step of conducting a "structural analysis" of the allergen; and a step of selecting one or more separation sites as required by the claims.

It is the Examiner's position that Kammerer et al. does teach a method of selecting COPs based upon the combination of performing T cell stimulation and IgE binding tests to obtain such COPs because the peptides tested in the paper "represent potential candidates for peptide immunotherapy" (In particular, abstract) and therefore would be "selected" for such a use based upon their ability to stimulate the T-cell proliferation response while minimally binding IgE (In particular, page 102, last paragraph). Kammerer et al. also teaches the steps of conducting a "structural analysis" of the allergen and "selecting one or more separation sites" because they have mapped the entire PLA<sub>2</sub> molecule and generated 40-60 amino acid long peptides that overlap each other by 10 residues (In particular, abstract). The peptides were specifically generated to overlap by 10 residues, so the separation sites were specifically selected. In order to specifically select these peptides, a structural analysis of the entire PLA<sub>2</sub> molecule was performed.

*Claim Rejections - 35 USC § 103*

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 55 and 63-65 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kammerer et al. in view of Spertini et al. (IDS filed on 07/26/2004).

Applicant's arguments filed on 07/16/2007 have been fully considered, but are not found persuasive.

Applicant argues that Kammerer does not disclose or teach the elements of independent claim 55 and Spertini fails to make up for those deficiencies of disclosing conducting a structural analysis or of selecting one or more separation sites.

It is the Examiner's position that Kammerer et al. does teach the elements of independent claim 55 as discussed *supra*.

9. Claims 55 and 61- 62 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kammerer et al. in view of Shanti et al. (PTO-892, Page 2, Reference U).

Applicant's arguments filed on 07/16/2007 have been fully considered, but are not found persuasive.

Applicant argues that Shanti fails to make up for the deficiencies of Kammerer with respect to independent claim 55 as described above and teaches away from the present invention by teaching that one of ordinary skill would have performed dot blots for showing the presence of IgE able to bind to COPs because COPs do not bind under comparable experimental conditions to serum IgEs of allergic patients. Thus, the method of the claimed invention provides the selection of peptides which, contrary to Shanti's peptides, do not bind IgE on dot blots.

The Examiner argues that the teachings of Shanti et al. simply make it obvious to try using a dot blot immunoblot in order to determine IgE binding to the COP taught of Kammerer et al. because Shanti et al. teaches that a dot blot immunoblot is a good way to test for IgE binding activity to allergen fragments (In particular, page 5356, paragraph spanning left and right columns, abstract, Figure 1). KSR forecloses the argument that a specific teaching, suggestion or motivation is required to support a finding of obviousness. See the recent Board decision Ex parte Smith, --USPQ2d--, slip op at 20, (Bd. Pat. App. & Interf. June 25, 2007) (citing KSR, 82 USPQ2d at 1396).

10. No claim is allowed.

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nora M. Rooney whose telephone number is (571) 272-9937. The examiner can normally be reached Monday through Friday from 8:30 am to 5:00 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (571) 272-0841. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 28, 2007

Nora M. Rooney, M.S., J.D.

Patent Examiner

Technology Center 1600

*Mahe m. Haddad*

MAHER M. HADDAD  
PRIMARY EXAMINER